

Introduced by Senator Simitian

(Principal coauthors: Assembly Members Berg, Evans, and Wolk)

(Coauthors: Senators Alquist and Scott)

(Coauthor: Assembly Member Pavley)

February 22, 2005

An act to amend Sections 15634 and 15655.5 of, and to add Section 15630.1 to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1018, as introduced, Simitian. Elder and dependent adult abuse.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. These procedures require persons, defined as mandated reporters, to report known or suspected instances of elder or dependent adult abuse. Under existing law, care custodians of elder or dependent adults and local law enforcement agencies are mandated reporters. A violation of the reporting requirements by a mandated reporter is a misdemeanor.

This bill would include within these reporting requirements mandated reporters of suspected financial abuse, as defined, and would, with certain exceptions, make the related misdemeanor provisions applicable to mandated reporters of suspected financial elder abuse, as defined, thereby imposing a state-mandated local program by changing the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15630.1 is added to the Welfare and
2 Institutions Code, to read:
3 15630.1. (a) As used in this section “mandated reporter of
4 suspected financial elder abuse” includes all officers and
5 employees of financial institutions.
6 (b) As used in this section the term “financial institution”
7 means any of the following:
8 (1) A depository institution, as defined in Section 3(c) of the
9 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).
10 (2) An institution-affiliated party, as defined in Section 3(u) of
11 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).
12 (3) A federal credit union or state credit union, as defined in
13 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec.
14 1752), including, but not limited to, an institution-affiliated party
15 of a credit union, as defined in Section 206(r) of the Federal
16 Credit Union Act (12 U.S.C. Sec. 1786(r)).
17 (c) Any mandated reporter of suspected financial elder abuse
18 who has direct contact with the elder or who reviews or approves
19 the elder’s financial documents, records, or transactions, in
20 connection with providing financial services with respect to an
21 elder or dependent adult, and who, within the scope of his or her
22 employment and professional practice, has observed or has
23 knowledge of an incident, that is directly related to the
24 transaction or matter that is within that scope of practice, that
25 reasonably appears to be financial abuse, or reasonably suspects
26 that abuse, shall report the known or suspected instance of
27 financial abuse by telephone immediately, or as soon as
28 practicably possible, and by written report sent within two
29 working days to the local adult protective services agency or the
30 local law enforcement agency.
31 (d) An allegation by the elder, or any other person, that
32 financial abuse has occurred is not sufficient to trigger the

1 reporting requirement under this section if both of the following
2 conditions are met:

3 (1) The mandated reporter of suspected financial elder abuse is
4 aware of no other corroborating or independent evidence of the
5 alleged elder abuse. The mandated reporter of suspected financial
6 elder abuse is not required to investigate any accusations.

7 (2) In the exercise of his or her professional judgment, the
8 mandated reporter of suspected financial elder abuse reasonably
9 believes that financial elder abuse did not occur.

10 (e) Failure to report financial abuse under this section shall be
11 subject to subdivision (h) of Section 15630.

12 (f) A person employed as a teller in an institution described in
13 paragraphs (1) and (2) of subdivision (a) shall not be subject to
14 subdivision (h) of Section 15630 during the first six months of
15 his or her employment, if the person has not received training or
16 instructional materials regarding the duties imposed by this
17 article including, but not limited to, identification and reporting
18 of financial elder abuse

19 SEC. 2. Section 15634 of the Welfare and Institutions Code is
20 amended to read:

21 15634. (a) No care custodian, clergy member, health
22 practitioner, *mandated reporter of suspected financial elder*
23 *abuse*, or employee of an adult protective ~~service~~ *services* agency
24 or a local law enforcement agency who reports a known or
25 suspected instance of elder or dependent adult abuse shall be
26 civilly or criminally liable for any report required or authorized
27 by this article. Any other person reporting a known or suspected
28 instance of elder or dependent adult abuse shall not incur civil or
29 criminal liability as a result of any report authorized by this
30 article, unless it can be proven that a false report was made and
31 the person knew that the report was false. No person required to
32 make a report pursuant to this article, or any person taking
33 photographs at his or her discretion, shall incur any civil or
34 criminal liability for taking photographs of a suspected victim of
35 elder or dependent adult abuse or causing photographs to be
36 taken of such a suspected victim or for disseminating the
37 photographs with the reports required by this article. However,
38 this section shall not be construed to grant immunity from this
39 liability with respect to any other use of the photographs.

(b) No care custodian, clergy member, health practitioner, *mandated reporter of suspected financial elder abuse*, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected elder or dependent adult abuse, provides the requesting agency with access to the victim of a known or suspected instance of elder or dependent adult abuse, shall incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report elder or dependent adult abuse, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, clergy member, health practitioner, *mandated reporter of suspected financial elder abuse*, or an employee of an adult protective services agency or a local law enforcement agency may present to the State Board of Control a claim for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

SEC. 3. Section 15655.5 of the Welfare and Institutions Code is amended to read:

15655.5. A county adult protective ~~service~~ *services* agency shall provide the organizations listed in paragraphs (v), (w), and

(x) of Section 15610.17, *and mandated reporters of suspected financial elder abuse pursuant to Section 15630.1*, with instructional materials regarding elder and dependent adult abuse and neglect and their obligation to report under this chapter. At a minimum, the instructional materials shall include the following:

(a) An explanation of elder and dependent adult abuse and neglect, as defined in this chapter.

(b) Information on how to recognize potential elder and dependent adult abuse and neglect.

(c) Information on how the county adult protective~~service~~ *services* agency investigates reports of known or suspected abuse and neglect.

(d) Instructions on how to report known or suspected incidents of abuse and neglect, including the appropriate telephone numbers to call and what types of information would assist the county adult protective~~service~~ *services* agency with its investigation of the report.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.